

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 11

BLUE LINE DISTRIBUTING d/b/a BLUE LINE FOOD
SERVICES DISTRIBUTION, A DIVISION OF LITTLE
CAESAR ENTERPRISES, INC.¹

Employer

and

Case No. 11-RC-6625

TEAMSTERS LOCAL 391, AFFILIATED WITH
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Blue Line Distributing d/b/a Blue Line Food Services Distribution, A Division of Little Caesar Enterprises, Inc., is a Michigan corporation with a facility located in Greensboro, North Carolina, where it is engaged in the business of non-retail sale and distribution of food and nonperishable products. The Petitioner, Teamsters Local 391, affiliated with International Brotherhood of Teamsters, seeks to represent a bargaining unit comprised of all full-time and regular part-time drivers and warehouse employees employed by the Employer at its Greensboro, North Carolina, facility, excluding all office clerical employees, guards, professional employees and supervisors as defined by the Act. The Petitioner filed this petition under Section 9(c) of the National Labor Relations Act. A hearing officer of the Board held a hearing, and the Employer and the Petitioner filed briefs with the undersigned.

¹ The Employer's name appears as amended at hearing.

As evidenced at the hearing and in the briefs of the Employer and the Petitioner, the sole issue is whether the senior lead employee in the warehouse, Roger Mullikin, is a supervisor within the meaning of Section 2(11) of the Act. The Petitioner contends that the senior lead person in the warehouse is an employee within the meaning of the Act. The Employer asserted at hearing and in brief that the senior lead employee is a supervisor within the meaning of Section 2(11) of the Act.

I have considered the evidence and the arguments presented by the parties on the issue. As discussed below, I have concluded that the senior lead employee in the warehouse is not a supervisor within the meaning of Section 2(11) of the Act. Accordingly, I shall direct an election in the unit described below. To provide a context for my discussion of this issue, I will first provide an overview of the Employer's operation. I will then provide my analysis, including a detailed discussion of the senior lead's job duties and the lack of supervisory indicia.

I. Overview of Operation

The Employer at its Greensboro, North Carolina, location maintains a facility from which it receives, stores and distributes food products for four restaurant chains: Little Caesar Pizza, TCBY Yogurt Company, Carvel Ice Creams and EGAY which provides food products to various airlines. The warehouse has a total area of eighteen thousand square feet of which about five thousand is for the freezer/cooler section, nine hundred is office space and the remainder is used for dry storage. There are three bays for the shipping and receiving of products through truck transportation. The food items primarily distributed through this warehouse are perishable products, freezer/cooler products and dry packaging products. The Employer currently employs sixteen hourly-paid employees and one hourly-paid supervisor in its transportation and

warehouse departments. These are the employees the Petitioner seeks to represent through its petition. The Greensboro operation also has an office department as its third department, which is headed by an office manager. Additionally, the Employer operates a cold storage facility in Kernersville, North Carolina.

The warehouse department is directed by the one facility supervisor, has four employees and operates on a two shift schedule. There are two employees in the warehouse department working during the first shift. One of these two employees is Roger Mullikin, the senior lead employee, who is the sole person whose status is at issue. Mullikin has the most seniority among the four warehouse employees. The hours of work for Mullikin are 7:00 a.m. to 4:30 p.m. Another first shift employee classified as a warehouseman works 8:00 a.m. to 4:00 or 4:30 p.m. This person works daily both in the Greensboro warehouse and the Kernersville cold storage facility. Assigned to work on the second shift in the warehouse department are one warehouseman and another employee classified as a lead employee. These two second shift employees generally report to work at 3:00 p.m. and end work about 11:00 p.m., but at times they are asked to begin work earlier between noon and 3:00 p.m. The daily duties of the four warehouse employees include receiving product from trucks parked at one of the three bays, pulling product from the warehouse which means preparing product stored in the warehouse for loading on to trucks, loading trucks, general cleaning of the facility and small maintenance. Normally warehouse employees work an eight hour shift, but it appears that overtime work for both the first and second shift warehouse department employees is not uncommon. Depending on their years of service with the Employer, the salary range for warehouse employees is between \$11.00 and \$13.50 per hour. Employees in each department reach the highest pay rate after five years of service with the Employer. The lead employee position is given an extra

dollar per hour, and the senior lead employee, Mullikin, receives an additional \$1.50 per hour. The Employer pays its warehouse department employees a shift premium bonus and a freezer bonus which becomes effective after an employee works thirty hours during a week in the cold storage facility.

There are twelve drivers in the transportation department of whom two are pizza kit drivers who are not required to have commercial drivers licenses. Ten other drivers, who drive tractor-trailers, have the position of class A driver, and they all must possess a commercial drivers license. One of these ten class A drivers is classified by the Employer as a lead driver and another one is a junior lead driver. The lead driver assists in determining how the trucks are routed, functions as a relief driver and is responsible for insuring that the trucking equipment of the Employer is working properly. In addition to his regular driving duties, the junior lead employee is responsible for driver training. The job of the drivers is to load the trucks, transport the various products to retail stores or other designated locations, unload the products and return. These transportation employees are also responsible for general cleaning and small maintenance in the warehouse. The entry level pay for the transportation department is \$12.50 per hour, and depending on years of service, the highest employee pay is \$17.55 per hour. In the transportation department, the junior lead position is paid an extra fifty cents an hour, and the lead position receives an additional one dollar per hour. The parties agree that both the junior lead and lead employees should be included in the bargaining unit found appropriate.

The person who is the single supervisor over the four warehouse department employees is also the supervisor over the twelve transportation department employees as well as the office department employees. This supervisor is paid an hourly rate using the transportation department pay scale and his years of service. In addition, the supervisor receives an extra dollar

and a half per hour. His business card describes him as the warehouse supervisor, but the status report of the Employer lists him as the senior lead in the warehouse. Currently, there is no one superior to this supervisor working at the warehouse of the Employer; but in past years, the supervisor had reported to a branch director stationed at the warehouse.

II. STATUS OF THE SENIOR LEAD POSITION

Before examining the specific duties and authority of the senior lead employee, I will briefly review the requirements for establishing supervisory status. Section 2(11) of the Act defines the term supervisor as “any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”

Supervisory status under the Act is determined by the duties of an individual not by his or her title or job classification. *Demco New York Corp*, 337 NLRB 850, 855 (2002). To meet the definition, a person needs to possess only one of the 12 specific criteria listed, or the authority to effectively recommend such action. *Ohio Power Co., v. NLRB*, 176 F. 2d 385 (6th Cir. 1949), cert. denied 338 U. S. 899 (1949). The exercise of one of the specified criteria or the authority to effectively recommend such action must involve the use of independent judgment. *Harborside Healthcare, Inc.* 330 NLRB 1334 (2000). The use of independent judgment is not exercised in a routine or clerical manner. *HS Lordships*, 274 NLRB 1167, 1168 (1985) citing *Valley Mart Supermarkets*, 264 NLRB 156, 158 (1983). Mere inferences or conclusory statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. *Sears, Roebuck, & Co.*, 304 NLRB 193 (1991).

When the possession of any of the specified criteria is not conclusively established, or “in borderline cases,” the Board looks to the well-established secondary indicia. *Monarch Federal Savings & Loan*, 237 NLRB 844, 845(1978). “However, when there is no evidence that an individual possess any of the several primary indicia for statutory status enumerated in Section 2(11) of the Act, the secondary indicia are insufficient by themselves to establish statutory supervisory status.” *J. C. Brock Corp.* 314 NLRB 157, 159 (1994); *St. Alphonsus Hospital*, 261 NLRB 620, 626 (1982).

The burden of proving supervisory status lies with the party asserting that such status exists, and the lack of evidence is construed against the party asserting supervisory status. *Kentucky River Community Care, Inc.*, 532 U. S. 706, 711-712 (2001); *Pine Brooks Care Center*, 332 NLRB 740 (1996); *Michigan Masonic Home*, 332 NLRB 1409 (2000). The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g. *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1138 (1999); *Bozeman Deaconess Hospital*, 322 NLRB 1107, 1114 (1997). Where there is inconclusive or conflicting evidence on specific indicia of supervisory authority, the Board will find that supervisory status has not been established with respect to those criteria. See *J. C. Brock Corp.*, 314 NLRB 157 (1994); *St. Alphonsus Hospital*, 261 NLRB 620 (1982).

With regard to whether the senior lead employee in the warehouse possesses any of the twelve criteria listed in Section 2(11), I find, and the Employer concedes in its brief, that there is no evidence in the record that the person in this position transfers, suspends, lays off, recalls, promotes, discharges, rewards, adjusts employees’ grievances, or effectively recommends such

actions.² However, in its brief, the Employer contends that the record supports a finding that the senior lead employee is a supervisor because he possesses and has exercised the ability to: (1) hire, (2) assign, (3) responsibly direct and (4) discipline other employees. The Employer also cites the scheduling of other employees by the senior lead as a separate primary indicia of supervisory status, but I will address his scheduling under assignment of work. Accordingly, after providing an overview of the senior lead position, I will discuss the role of the senior lead employee in hiring, responsibly directing, assigning work and disciplining employees. I will set forth my analysis of each criteria, including a discussion concerning whether the senior lead employee exercises the use of independent judgment in these areas. I will then discuss the secondary indicia of supervisory status raised by the Employer in its brief.

A. Overview of Senior Lead Position

As set out above, the senior lead employee is an hourly-paid employee in the warehouse department who reports directly to the only supervisor at the facility. According to Mullikin, approximately three to four years in the past, he complained to the then branch director of the facility that he desired more pay. He stated that in order to justify paying him a higher hourly rate, the branch director gave him the title of senior lead warehouseman along with added responsibilities. At the time he was named senior lead warehouseman, he was basically the only warehouseman. The senior lead earns \$1.50 per hour more than the two employees classified as warehousemen and fifty cents more per hour than the one lead employee in the warehouse. He punches a time clock and works essentially the same number of hours as the other three warehouse department employees. The senior lead employee shares in the same benefits the Employer provides to other hourly employees and dresses in the same manner as other

² In that regard, the Employer does not perform annual evaluations or appraisals.

warehouse employees, i.e., no uniform, just casual clothes. All employees, including the senior lead employee, use the same parking area, same bathrooms and same cafeteria. The senior lead employee spends a small portion of his day working in an office he shares with the supervisor and the remainder of each day working on the warehouse floor. The office is adjacent to the warehouse floor with a connecting door between the two spaces. In the office is a desk and a computer which the senior lead uses each day. Approximately two hours a day the senior lead works with the other first shift employee, and approximately another two hours a day he works with the two employees working on second shift. The remainder of the day the senior lead works alone due to the fact that the first shift warehouseman leaves the warehouse to work at the cold storage facility in Kernersville.

The senior lead employee has three duties: the mapping of the loading of delivery trucks, the conducting of inventory control and the processing of purchase orders. The other warehouse employees do not have these duties. In performing the mapping for trucks, the senior lead employee receives the information of all the products to be loaded on a certain truck. Then each morning on paper he distributes those pallets of products on a loading map using the criteria of whether the particular product needs to be transported in the dry, cooler or freezer section of the truck. He is also guided in his mapping by the distribution of product weight on the truck, the overall weight of the truck once it is fully loaded, and the ease for the driver in moving through the truck when unloading. During a normal work week, the senior lead employee will complete seventeen mappings for loading trucks because the Employer has seventeen different routes per week. In the absence of the senior lead employee, the Employer will have either the lead driver or the lead warehouseman complete the mapping. These maps for each specific route are used daily by employees to follow as the sequence for loading certain trucks. The senior lead

employee, each morning, also completes another document referred to as a grid or landscape paper. This report identifies every piece of product to be loaded on a specific truck, the total quantity of each product and how many of each item a designated customer should receive. The freezer section on the truck is loaded first. The warehouseman on first shift uses this report to pull pallets of product from cold storage to be loaded in the freezer section of a specific truck. Since the truck freezer sections are loaded first, the number of pallets in the freezer section will impact on how much weight on dry pallets will be permitted to be loaded. According to the senior lead, it requires about five minutes for him to map a truck. He describes this mapping as routine, and he did not take any classes or receive extensive training to be able to perform the mapping of the loading of trucks.

Each week the senior lead receives a report referred to as a cycle count from the corporate office of the Employer. This report is a computer list of different specific items of products in the warehouse. He then physically counts each individual item in the warehouse that is listed on the cycle count and places the actual count numbers on a report, which is given to the office department. Normally there is not a significant deviation between his actual count of the product in the warehouse and the information contained on the computer generated cycle count report. However, should a significant deviation occurs, the senior lead would bring the discrepancy to the attention of the supervisor. For slight variances between the actual count of product and the cycle count report, normally the persons in the office department will make any necessary adjustments and explain why such adjustments were required. The senior lead described his inventory duties as routine and not difficult, and he received no extensive training or formal classes to learn how to conduct an inventory.

Any warehouseman can receive a product delivered to the warehouse. Once this happens, a copy of the received purchase order for the inbound freight is brought to the senior lead who has the responsibility to match the received purchase order document with another copy of that purchase order which is maintained at the warehouse. The senior lead verifies that the received purchase order is properly completed, and if he personally did not receive the purchase order, he makes certain the purchase order was properly recorded. If the received purchase order is different from the master purchase order maintained at the warehouse, the senior lead is responsible for adjusting the master purchase order to reflect the actual amount received. After he matches the two purchase order copies, he takes them to the office department employees. Again, the senior lead said his processing of purchase orders is not difficult; and he did not attend classes or receive training to become able to perform this task.

The senior lead spends an average of about thirty minutes per day mapping trucks for loading. He requires from two to ten minutes each day to perform purchase order processing. To complete his product inventory duties it takes him approximately one hour each week. While the senior lead also conducts forklift safety training for other employees, this appears to be an assignment which is only done sporadically and does not consume an appreciable amount of his work time. Other than these described additional assignments, the senior lead spends the remainder of his work time performing the duties of a warehouseman.

The maximum pay per hour the senior lead employee in the warehouse may currently receive is fifteen dollars which is \$13.50 per hour plus his additional pay of \$1.50 per hour for being senior lead. The Employer agrees that all employees in the transportation department, including the lead employee, should be included in the appropriate bargaining unit. As noted, the lead employee in the transportation department receives an extra \$1.00 per hour, and the

salary range for all transportation employees ranges from \$12.50 to \$17.55 per hour. Thus, while not revealed in the record, it could reasonably be expected that several transportation employees included in the bargaining unit are paid more per hour than the senior lead in the warehouse.

B. Hiring of Employees

The Employer asserts that the senior lead employee in the warehouse should be determined to be a supervisor because he plays an important role in the hiring process of the Employer. The record shows that the one supervisor at the warehouse makes all final decisions as to the hiring of employees. Consequently, the issue of hiring regarding the senior lead is reduced to whether he can effectively recommend the hiring of an employee. The evidence shows that five employees: Tony Beasley, Charles Mills, Robert Harris, Eric Castevens and Andre Valerez, have been hired by the Employer since the senior lead position was created. The senior lead did not participate in the hiring of Beasley, including any pre employment interviews. The senior lead, at the request of the supervisor, may have referred Beasley to the Employer; but this is not unique as the supervisor stated he routinely asks various employees if they know of any person who desires a job when the Employer is seeking to hire someone. Mills was a former employee who was later rehired. The senior lead was on vacation when Mills was rehired and had no participation in that action. The hiring of Harris is similar to that of Beasley. The senior lead was not present when Harris was interviewed for employment by the supervisor, but he may have referred Harris to the Employer when he learned that an employee opening existed. The supervisor stated the senior lead was in the room when Castevens was interviewed for employment, but the Employer presented no evidence regarding the details of the interview. Again, it appears that Castevens, like Beasley and Harris, was notified by the senior lead of the

possibility of employment with the Employer. Finally, it is undisputed that the senior lead in the warehouse recommended that the supervisor not hire Valerez for a warehouse position, but the lead driver in the transportation department, a bargaining unit position, recommended that Valerez be hired for the warehouse. The supervisor agreed with the recommendation of the lead driver in transportation and subsequently hired Valerez as a warehouseman.

I find that the involvement of the senior lead in the hiring of Beasley, Mills, Harris and Castevens ranges from none to minimal. Certainly by referring potential employees to apply for job openings with the Employer, supplying them with application forms, or voicing his opinion to the supervisor about an employee candidate, the senior lead was not doing anything more than the supervisor admitted that he would ask all other employees to do. Likewise, any pre-employment discussions the senior lead had with the employees named above appear to concern general information with which all other employees would be familiar. In conclusion, I do not find that the role of the senior lead employee in the hiring of the five employees employed since he became senior lead indicates he is a supervisor because the evidence does not demonstrate that he, more than any other employee, effectively recommended that they be hired. *Volair Contractors*, 341 NLRB No. 98 (2004); *Victoria Partners*, 327 NLRB 54 (1998); compare *Queen Mary*, 317 NLRB 1303 (1995)

C. Assigning and Directing Work

The Employer maintains that by his daily completion of the mapping and landscape documents, the senior lead assigns and responsibly directs the work of other employees. This is because, according to the Employer, the mapping is effectively an assignment sheet for other warehouse employees as to how they are to load each truck with products. However, the

evidence shows that the mapping performed by the senior lead does not allow him to use independent judgment. Rather his determinations in mapping the loading of a truck are controlled by criteria given to him. For example, the senior lead does not decide what products are loaded on a truck. This is determined by the orders placed by the customers receiving the product. He is instructed to load the freezer items first and then the dry pallets. In doing so, he is controlled by two weight restrictions. First, the truck should be loaded so that it is somewhat balanced in weight. Second, the overall weight of the entire cargo and truck can not exceed the legal weight limits permitted for the truck. Finally, taking into account the sequence of delivery stops, the senior lead must try to orient the products on the truck in a manner which makes it most convenient for the driver to unload them. Both the supervisor and the senior lead referred to the task of mapping as routine. This description is supported by the facts that the senior lead stated that it only requires him about five minutes to map a truck and that other uncontested unit employees perform the mapping in his absence. By mapping the loading of trucks, the senior lead is not using independent judgment. Instead, he is following established criteria in properly placing on the trucks the products he is directed to load through the orders of customers. Moreover, the trucks are, for the most part, loaded during the second shift and on Sundays which are times when the senior lead is not at work. Thus, I find that by the work of mapping the loading of trucks the senior lead is neither assigning work to other employees or responsibly directing the work of other employees. *Youville Health Care Center*, 326 NLRB 495 (1998); *Chrome Deposit Corporation*, 323 NLRB 961 (1997)

As further evidence that the senior lead employee responsibly directs the work of other employees, the Employer asserts that he sets the work schedules for the three other warehouse employees. As an example of this argument, the Employer points to the time the other first shift

warehouse employee, due to a death in his family, needed to be absent for two days; and the senior lead asked the two second shift warehouse employees to report to work early. In this situation, according to the record, the first shift employee informed the supervisor of his need to miss two days of work and the supervisor relayed this information to the senior lead. Realizing that the Employer would be short-handed on first shift, the senior lead first asked the supervisor for permission to ask the two second shift employees to each come to work early on separate days and the supervisor agreed. In fact, the two second shift employees between themselves picked which of the two days they would each come to work early. It appears clear from the testimony that the senior lead does not possess independent authority to change the work schedule for other employees, and should he ask a fellow employee to begin work early, he has no authority to make that employee agree to start earlier.

The Employer refers to another incident in which the senior lead removed some customer stops from a delivery run of a driver so that the driver could complete his run during the day rather than at night and thus begin his vacation earlier. However, the record reveals that the senior lead made these adjustments to the delivery schedule of the driver only as a result of the supervisor first requesting of the senior lead that the driver be accommodated to begin his vacation sooner. There is no evidence that the senior lead would have taken the action to alter the schedule of the driver but for the instruction of the supervisor. I find nothing concerning the scheduling of work for other employees by the senior lead which would cause me to conclude that the senior lead assigns work or responsibly directs the work of employees through the use of his independent judgment. *Quality Mechanical Insulation, Inc.*, 340 NLRB 798 (2003); *Ryder Truck Rental*, 326 NLRB 1386 (1998)

D. Discipline

The Employer further asserts that the senior lead is a supervisor because he has the ability to issue discipline to employees. Though discipline of any kind is not common at the warehouse facility, it is clear from the record that the senior lead has never participated in any written discipline given to an employee. Furthermore, the supervisor testified that he was not aware of anytime the senior lead recommended that an employee be disciplined. Nevertheless, the supervisor stated he believed that the senior lead had given verbal discipline to an employee. The Employer presented no further evidence regarding any past verbal discipline the senior lead may have issued. The senior lead testified that he had never been given authority to discipline employees and had never participated in the discipline of an employee. I find that the senior lead employees does not possess the authority to discipline employees sufficient to confer him with supervisory status. *Wilshire At Lakewood*, 343 NLRB No. 23 (2004); *Green Acres Country Care Center*, 327 NLRB 257 (1998); *North Jersey Newspapers*, 322 NLRB 394 (1996)

E. Secondary Indicia

The Employer, in its brief, points to several additional indicia of supervisory authority, including its assertions that the senior lead is responsible for quality assurance compliance, shares an office with the supervisor, substitutes for the supervisor, has keys which give him access to employee personnel files, receives the same benefits and an additional \$1.50 per hour in pay as does the supervisor, signs employee training handbooks where it is designated “Company Supervisor”, and at times initials time cards for other warehouse employees who forget to punch the time clock. However, in the absence of primary indicia as enumerated in Section 2(11) of the Act, secondary indicia are insufficient to establish supervisory status. *Volair*

Contractors, 341 NLRB No. 98, slip op. at 2, fn.8 (2004). It is settled that “secondary indicia of supervisory status . . . are in themselves not controlling.” *Bay Area Los Angeles Express*, 275 NLRB 1063, 1080 (1985), quoting *Memphis Furniture Mfg., Co.*, 232 NLRB 1018, 1020 (1977). Accordingly, I find that the Employer’s proffer of secondary indicia is insufficient to establish that the senior lead employee is a supervisor within the meaning of the Act. *Ryder Truck Rental*, supra fn.8 (1998)

F. Conclusion

Accordingly, I find that the Employer, as the party asserting supervisory status, has not met its burden in proving that the senior lead employee in the warehouse has the authority to carry out any of the functions set forth in Section 2(11) of the Act, or to effectively recommend such functions and utilize independent judgment in the execution of such functions. Therefore, I find that the senior lead employee is not a statutory supervisor and, thus, is appropriately included in the unit herein.

III. Conclusions and Findings

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the act, and it will effectuate the purposes of the act to assert jurisdiction in this case.

3. The Union involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time drivers and warehouse employees, including the senior lead employee, employed by the Employer at its Greensboro, North Carolina facility; excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

IV. Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Teamsters Local 391, affiliated with International Brotherhood of Teamsters. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which

commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U. S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 4035 University Blvd., Suite 200, P. O. Box 11467, Winston-Salem, NC 27116-1467 on or before **February 9, 2006**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 336/631-5210. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need to be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

V. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th St. N. W. Washington, DC 20570 and received by the Board in Washington by **February 16, 2006**. The request may not be filed by facsimile.

Dated at Winston-Salem, North Carolina, on the 2nd day of February 2006.

/s/ Willie L. Clark, Jr.

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